

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

JOSEPH DICKINSON,

Defendant.

)
)
)
)
)
)
)

I.D. No. 090100990A

Submitted: February 12, 2020

Decided: March 2, 2020

Upon Defendant's Third Motion for Postconviction Relief

SUMMARILY DISMISSED.

ORDER

Joseph Dickinson, *pro se*, Smyrna, DE.

John W. Downs, Esquire, Deputy Attorney General, Department of Justice, 820 N. French St., Wilmington, Delaware, Attorney for the State.

WHARTON, J.

This 2nd day of March, 2020 upon consideration of Defendant's third Motion for Postconviction Relief¹ and the record in this matter, it appears to the Court that:

1. Defendant Joseph Dickinson ("Dickinson") was convicted by a jury in 2009 of Attempted Robbery First Degree, Burglary Second Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Destructive Weapon and Conspiracy Second Degree.² He was declared an habitual offender on the attempted robbery charge and sentenced to life without parole.³ He received an additional six years at Level 5 on the weapon and burglary charges, followed by probation on the remaining charges.⁴ On direct appeal, the Delaware Supreme Court affirmed his conviction and sentence.⁵

2. Dickinson twice has moved for postconviction relief under Rule 61. His first effort, made with the assistance of counsel, was unsuccessful.⁶ The Delaware Supreme Court affirmed the judgment of the Superior Court.⁷ His second postconviction relief motion was summarily dismissed because it was untimely and was a successive motion.⁸ That judgment of the Superior Court was affirmed as well.⁹

¹ D.I.94.

² D.I. 36.

³ D.I. 44, 45.

⁴ D.I. 45.

⁵ *Dickinson v. State*, 8 A.3d 1166 (Del. 2010).

⁶ *State v. Dickinson*, 2012 WL 3573943 (Del. Super. 2012).

⁷ *Dickinson v. State*, 2013 WL 1926263 (Del. 2013).

⁸ *State v. Dickinson*, 2016 WL 6134906 (Del. Super. 2016).

⁹ *Dickinson v. State*, 2016 WL 2585887 (Del. 2016).

In the present motion, relying on *Stoner v. State*,¹⁰ Dickinson claims that he cannot be convicted of both attempted robbery as an accomplice and conspiracy second degree.¹¹

3. Before addressing the merits of a defendant's motion for postconviction relief, the Court must first apply the procedural bars of Superior Court Criminal Rule 61(i).¹² If a procedural bar exists, then the Court will not consider the merits of the postconviction claim.¹³

5. Under Delaware Superior Court Rules of Criminal Procedure, a motion for post-conviction relief can be barred for time limitations, successive motions, procedural default, or former adjudication.¹⁴ A motion exceeds time limitations if it is filed more than one year after the conviction becomes final, or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right was first recognized by the Supreme Court of Delaware or the United States Supreme Court.¹⁵ A second or subsequent motion is considered successive and therefore barred and subject to summary dismissal unless the movant was convicted after a trial and "pleads with particularity that new evidence exists that the movant is actually innocent" or

¹⁰ 213 A.3d 585 (Del. 2019).

¹¹ D.I. 94.

¹² *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

¹³ *Id.*

¹⁴ Super. Ct. Crim. R. 61(i).

¹⁵ Super. Ct. Crim. R. 61(i)(1).

“pleads with particularity a claim that a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court or the Delaware Supreme Court, applies to the movant’s case and renders the conviction ... invalid.”¹⁶ Grounds for relief “not asserted in the proceedings leading to the judgment of conviction” are barred as procedurally defaulted unless the movant can show “cause for relief” and “prejudice from [the] violation.”¹⁷ Grounds for relief formerly adjudicated in the case, including “proceedings leading to the judgment of conviction, in an appeal, in a post-conviction proceeding, or in a federal habeas corpus hearing” are barred.¹⁸

6. The bars to relief do not apply either to a claim that the court lacked jurisdiction or to a claim that pleads with particularity that new evidence exists that creates a strong inference of actual innocence,¹⁹ or that a new retroactively applied rule of constitutional law renders the conviction invalid.²⁰ The bars remain applicable here because Dickinson has not claimed that the Court lacked jurisdiction, nor has he met the pleading requirements of Rule 61(d)(2)(i) or (d)(2)(ii).

7. This third motion is barred for two reasons. It is untimely, having been filed more than a year after Dickinson’s judgment of conviction became final.

¹⁶ Super. Ct. Crim. R. 61(i)(2); Super. Ct. Crim. R. 61(d)(2).

¹⁷ Super. Ct. Crim. R. 61(i)(3).

¹⁸ Super. Ct. Crim. R. 61(i)(4).

¹⁹ Super. Ct. Crim. R. 61(i)(5).

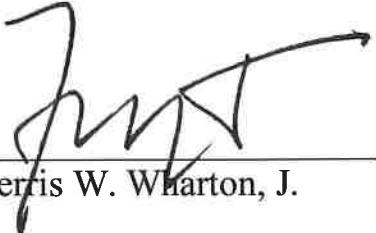
²⁰ Super. Ct. Crim. R. 61(d)(2)(i) and (ii).

Also, it is a successive motion, his third, that does not satisfy the pleading requirements of Rules 61(d)(2)(i) or (d)(2)(ii). The Court finds Dickinson's reliance on *Stoner* unavailing, inasmuch as it does not stand for the proposition for which he sites it. Further, in *Stoner*, the Delaware Supreme Court did not announce a retroactively applicable rule of constitutional law. Thus, Rule 61's bars to relief remain in place.

8. Summary dismissal is appropriate if it plainly appears from the motion for postconviction relief and the record of prior proceedings in the case that the movant is not entitled to relief.²¹ It is plain from this third motion and the record in this case that Dickinson is not entitled to relief.

Therefore, since it plainly appears from Motion for Postconviction Relief and the record in this case that Dickinson is not entitled to relief, the Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.



Ferris W. Wharton, J.

oc: Prothonotary
cc: Investigative Services

²¹ Super. Ct. Crim. R. 61(d)(5).